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SUBJECT: ITALY: NO FUTURE COURT APPEARANCES FOR PRIME MINISTER BERLUSCONI

REF: A. ROME 2529
B. ROME 2284

(U) SENSITIVE BUT UNCLASSIFIED; NOT FOR INTERNET DISTRIBUTION.

11. (SBU) SUMMARY: LEGISLATION TO SUSPEND TRIALS AGAINST ITALY'S FIVE HIGHEST OFFICIALS, INCLUDING THE PRIME MINISTER, DURING THEIR TERMS OF OFFICE, IS VIRTUALLY LAW. WE PREDICT A TRIAL-FREE ITALIAN EU PRESIDENCY AND REMAINING TENURE FOR PRIME MINISTER BERLUSCONI. END SUMMARY.

12. (U) THE CHAMBER OF DEPUTIES ON JUNE 18 PASSED LEGISLATION SUSPENDING TRIALS AGAINST ITALY'S FIVE HIGHEST INSTITUTIONAL FIGURES (PRESIDENTS OF THE REPUBLIC, SENATE, CHAMBER OF DEPUTIES, AND CONSTITUTIONAL COURT, AND THE PRIME MINISTER) DURING THEIR TERMS IN OFFICE BY A VOTE OF 302 IN FAVOR, 17 AGAINST, WITH 13 ABSTENTIONS. (MOST OF THE OPPOSITION WALKED OUT OF THE CHAMBER.) CENTER-LEFT DAISY PARTY DEPUTY ANTONIO MACCANICO, WHO FIRST INTRODUCED LEGISLATION TO SHIELD THE FIVE OFFICIALS, AND GREENS DEPUTY MARCO BOATO, WHOSE DRAFT TO EXPAND PARLIAMENTARY IMMUNITY WAS USED BY THE MAJORITY AS THE BASIS FOR THE LEGISLATION, JOINED THE CENTRIST UNION OF DEMOCRATS FOR EUROPE (UDEUR) AND ITALIAN DEMOCRATIC SOCIALISTS (SDI) IN ABSTAINING. THE SENATE PASSED THE SAME LEGISLATION ON JUNE 5 (REF A).

13. (U) THE LEGISLATION MUST STILL BE SIGNED BY PRESIDENT OF THE REPUBLIC CIAMPI AND PUBLISHED IN THE OFFICIAL GAZETTE BEFORE TAKING EFFECT. UNDER THE CONSTITUTION, CIAMPI HAS 30 DAYS TO SIGN THE LEGISLATION OR RETURN IT TO PARLIAMENT, BUT HE IS EXPECTED TO SIGN IT WITHIN THE WEEK. IT WOULD NORMALLY BE PUBLISHED THE FOLLOWING DAY; A LAW TAKES EFFECT THE DAY AFTER PUBLICATION. THUS, ALL OBSERVERS PREDICT THAT THE LEGISLATION WILL BE LAW WELL BEFORE THE END OF JUNE, AND CERTAINLY IN TIME FOR ITALY TO ASSUME THE EU PRESIDENCY.

14. (SBU) IT IS UNCLEAR WHETHER THE PRIME MINISTER WILL NOW PARTICIPATE IN THE NEXT SCHEDULED HEARING FOR HIS JUDICIAL BRIBERY TRIAL (THE "SME" CASE, REF B AND PREVIOUS) ON JUNE 125. HE COULD DO SO FOR PUBLIC RELATIONS OR OTHER REASONS, BUT WOULD APPEAR NOT TO BE REQUIRED TO DO SO UNDER THE NEW LAW. HIS LAWYERS ARE EXPECTED TO REQUEST A SUSPENSION OF PROCEEDINGS UNDER THE NEW LAW AT THAT SESSION.

15. (SBU) MOST OBSERVERS ARE ALSO PREDICTING, HOWEVER, THAT EITHER THE MILAN COURT CONSIDERING THE SME CASE OR THE MAGISTRATE PROSECUTING IT WILL REQUEST A CONSTITUTIONAL REVIEW OF THE LEGISLATION. OPPOSITION PROTESTERS WITHIN AND OUT OF PARLIAMENT HAVE VOCIFEROUSLY ASSERTED THAT THE LAW IS UNCONSTITUTIONAL. SUCH ACTION IS VERY LIKELY, ALBEIT NOT GUARANTEED, TO HAVE THE SAME EFFECT AS THE LEGISLATION ITSELF -- PUSHING FURTHER ACTION ON THE BERLUSCONI CASE DOWN THE ROAD INDEFINITELY. CENTRIST, BUSINESS-ORIENTED "IL SOLE 24 ORE" WROTE THAT THE CONSTITUTIONAL COURT HAS USED "PARTICULAR CAUTION" WITH CASES CONCERNING THE CONFLICT BETWEEN PARLIAMENT (WE WOULD SAY THE GOVERNMENT) AND THE MAGISTRACY; AT LEAST ONE CASE SEEKING A DETERMINATION OF APPROPRIATE COMPETENCIES FOR EACH HAS BEEN PENDING BEFORE THE COURT FOR SOME TWO YEARS.

16. (U) MEANWHILE, THE GOVERNING COALITION HAS ALSO INTRODUCED DRAFT LEGISLATION TO AMEND THE CONSTITUTION TO PROVIDE BROADER PARLIAMENTARY IMMUNITY, MIRRORING LEGISLATION RECENTLY ENACTED BY THE EUROPEAN PARLIAMENT. (THE IMMUNITY WOULD APPLY TO BERLUSCONI, SENATE PRESIDENT PERA, AND CHAMBER PRESIDENT CASINI BY VIRTUE OF THEIR SIMULTANEOUS STATUS AS ELECTED PARLIAMENTARIANS; A PROVISION COULD ALSO BE MADE FOR THE PRESIDENTS OF THE REPUBLIC AND OF THE CONSTITUTIONAL COURT.) THE LEGISLATION IS IN THE SENATE. A CONSTITUTIONAL AMENDMENT REQUIRES TWO READINGS, SEPARATED BY 90 DAYS, IN EACH HOUSE OF PARLIAMENT. DEPENDING ON THE VOTE COUNT, IT CAN ALSO REQUIRE A NATIONAL REFERENDUM. IT IS THEREFORE POSSIBLE THAT BY THE TIME THE CONSTITUTIONAL COURT WERE TO REVIEW THE CURRENT LEGISLATION, THE PENDING LEGISLATION WOULD RENDER THE WHOLE DISCUSSION MOOT.

17. (SBU) COMMENT: WE PREDICT A TRIAL-FREE EU PRESIDENCY FOR PRIME MINISTER BERLUSCONI, AND ALMOST CERTAINLY A TRIAL-FREE REMAINDER OF HIS TERM IN OFFICE.
SEMBLER

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